



## **Guide for understanding Public Records**

# What are Public Records?

- Public Records can mean different types of court records from Criminal to Civil and also include property records, marriage/divorce records, and bankruptcy records.
- The focus of this presentation will be on criminal records.

# What are Public Records?

- **Why is it important to have an understanding of different types of criminal records?**
  - An understanding of Public Record information is important when conducting an Individualized Assessment and applying the Green Factors;
    - Nature and gravity of offense
    - Time that has passed since the offense
    - Nature of job held or sought
  - Individualized Assessment is recommended by the EEOC when using criminal information in order to make an adverse hiring decision.
  - Additionally, some states/cities, by law, require this type of review when making a decision.

# Public Record Searches in Background Reports

**What type of court records will a criminal search return in a background report performed by Corporate Screening?**

## **Convictions for:**

- **Felony:** A serious offense carrying a possible penalty of incarceration from one year to life in a state prison, to the death penalty.
- **Indictable:** Term used in NJ (penalties similar to a felony charge)
- **Misdemeanor:** Crime punishable by a fine and/or county jail time for up to one year; not a felony.

## **Also:**

- **Pending cases:** Felony, Indictable, or misdemeanor charges that are still pending at the court.

# Public Record Searches in Background Reports

- **What type of court records will NOT be returned?**
  - Dismissed cases/charges
  - Sealed/Expunged cases
  - Juvenile Records (tried in Juvenile court)
    - Juveniles tried in Adult court records will appear.
  - Charge levels below Misdemeanor
    - Infractions/Violations/Minor Misdemeanors/Traffic Violations/Summary Offences, etc.

# Criminal Record Sources

- **National Criminal Record Search**
- **Federal Courts**
- **State Repositories**
- **County Courts**
  - Upper and Lower Courts

# National Criminal Record Search

- A National Criminal Record search is NOT a court search
- It is a search of a database that compiles millions of criminal records into a single source.
- A National Criminal search does NOT have information from every court in the country.
- The search is an effective way to augment the public record searches completed as part of a background report as its not reasonable to conduct a court search in every court in the country.
- All “hits” from a National Criminal Record search are confirmed with the court of record to ensure the information is accurate and up-to-date.

# Federal Courts

- Federal criminal court cases are cases involve violations of the Constitution or federal laws and crimes committed on federal land.
  - Bank Robbery
  - Rackateering
  - Drug Traffiking
  - Crimes that cross state lines
- Federal courts will hear cases on serious crimes; however, less than 10% of criminal cases are heard in Federal Court.
- Cases can be heard in any one of 94 District courts throughout the US, though cases tend to be heard in the area where the crime occurred.
- Federal court records often do not make identifiers apparent in the court docket.
- If you are not conducting Federal searches as part of your background, you may wish to consider adding this type of search.



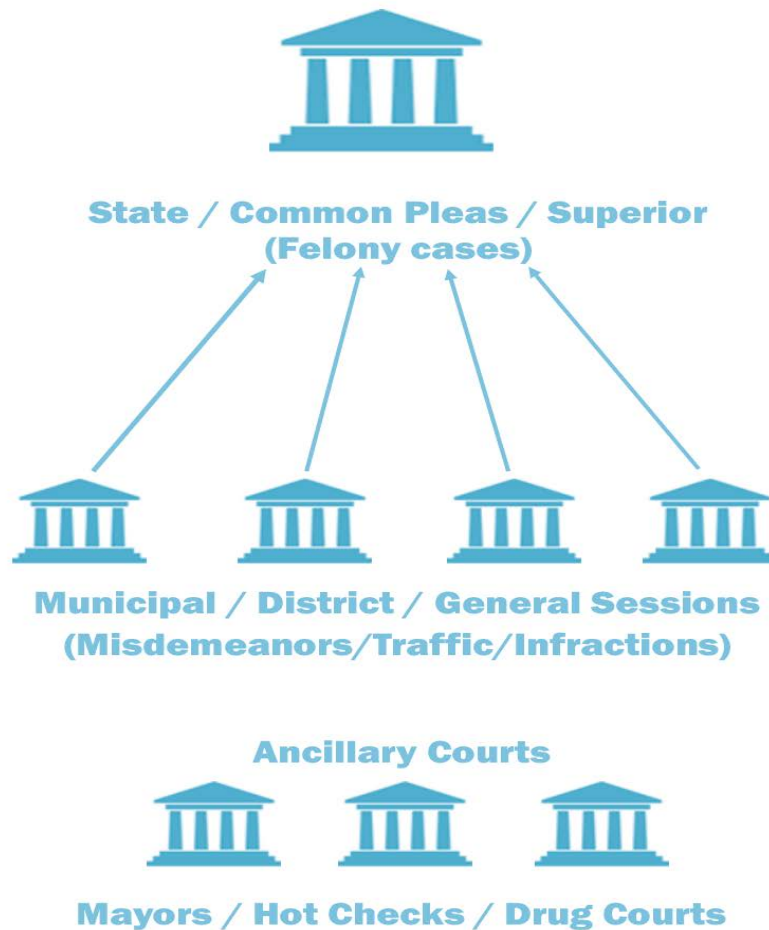
# State Repositories

- Consolidation of criminal records from the various courts in a state.
  - Not available in all states
  - In many states the state repository search is conducted through fingerprints.

# County Court search

- A County Court criminal record search is the most common type of criminal record search.
- There are nearly 3200 counties in the United States.
- Most county court systems consist of an Upper Court which hears felony level cases and several lower courts which hear misdemeanor level cases.

# Basic County Court Structure



# Conducting Searches

- **How are searches conducted?**

- A common misconception is that there is a single search that can tell you if an individual has ever had any legal trouble.
  - The US court system is fractured and not uniform. While there are commonalities, each jurisdiction is, unique especially when it comes to accessing records.
- Searches are generally of the court docket information; this is a log of court actions (charges, pleas, conviction, sentencing, etc.)
  - The docket does not include specific information related to the charge.
    - For example; a docket may list an individual was convicted of Theft, but it will not list what was stolen or from where or the amount (other than a general > than or < less than amount)
    - These type of details can be obtained, if necessary, by a file pull (if available)

# Conducting Searches

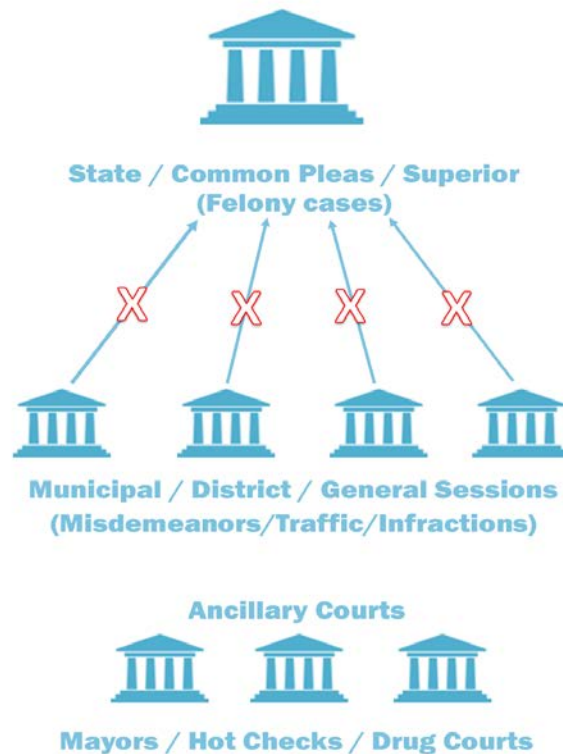
- **What are the different ways to access court records?**
  - **Online court records**
    - Court provides online access to their court records to the public. Records available include a full court docket and sometimes court documents.
      - Many courts are removing identifiers (DOB, address, etc) from these records which can cause delays when there is a possible match.
  - **Court Index Search**
    - Court provides access to limited court information online
      - Record may be a name only, with no details related to charges, convictions or identifiers.
      - Further research requires an individual to go to the court to review records.
  - **In person search**
    - Court provides public terminals for individuals to come to the court and search court records. Records can only be searched within the courthouse
  - **Clerk Search**
    - Court records can only be searched by the clerk at the court
      - Researchers go to the court and give the search criteria to the clerk who searches the records.
      - Some courts allow researchers to mail or fax in these type of requests.

# Search Results

- **Why didn't you find this criminal record that was claimed or could be found in a google search?**
  - An applicant may claim a criminal record that is not returned in a report for several reasons:
    - The crime may have occurred in a area not covered by the background report. Searches are generally based on where an applicant has resided; however, there's always the possibility a person was convicted outside of their county of residence.
      - This is why a National Criminal Record search is a good way to bolster the searches in a background report.
  - The case may have been sealed/dismissed or is a charge less than a misdemeanor
    - In an effort to be forthright and honest, occasionally applicant's will claim a criminal record they no longer need to disclose such as a case that was dismissed.

# Search Results

- The case is from a lower court within the county that was searched.
  - In many counties, the lower courts maintain their own records and they are not indexed with the county court records, meaning you would need to search each lower court individually.
  - The crime may also appear at one of the ancillary courts.



# Understanding Criminal Records in Reports

- **Filing Date:** Date charges were formally filed with the court
- **Type of Crime:** Felony/Misdemeanor/Indictable
  - Sometimes you'll also receive the level of the crime, i.e. Felony – 2<sup>nd</sup> degree
- **Disposition:** Disposition is the ultimate finding of the court. For background reports you will either see “Guilty” or “Pending”.
- **Sentencing:** Details of the penalty imposed on the defendant after a finding of guilt. This can include fines/costs, probation requirements (counseling, drug testing, etc.) time sentenced to jail or prison.
  - **Suspended:** Parts of the sentencing may be Suspended. This means they are not imposed on condition. For example, a defendant may be sentenced to 1 year of jail; suspended. This means the court is not requiring the defendant to spend time in jail at the time of sentencing but can impose the sentence if the defendant does not meet other requirements of their probation, i.e. attending classes, failing a drug test, committing another crime, failure to pay fines.



# Understanding Criminal Records in Reports

- **A note about jail/prison time:**

- The time a defendant is sentenced to prison/jail does not reflect the actual time the person may have spent in confinement. The actual time spent in custody is rarely reflected in the court record.
- Defendants are often released prior to completing the entirety of the sentence imposed.

# Common Questions

- **What is “deferred adjudication”?**

- Aka Adjudication Withheld, deferred judgement, diversion
- Deferred adjudication means the court is withholding a finding in the case. The defendant is given guidelines to follow for a certain amount of time. If the obligations are met, the case is dismissed. If the defendant does not meet the obligations the court may find the defendant guilty and impose sentencing.
- **What does this charge mean?**  
If you’re not sure what a charge means, don’t be afraid to ask!
- **Importuning** = solicitation of a minor
- **Larceny** = Theft
- **Petit Theft** = Minor theft
- **Uttering** = forgery/fraud/bad checks

# Common Questions

- **I was told my search requires additional research into a possible record or I need to provide additional information in order to complete the search. Does this mean my applicant has/had a criminal record or criminal court case?**
  - **NO**. As you saw in how the courts are searched there could be several reasons why additional information may be needed. Furthermore, you should not base your employment decision on speculation, only what appears in the report.
    - Initial hit could be a person with the same or similar name and there are limited identifiers available on the initial search.
    - Turns out case on the index is a civil or traffic case.
- **My applicant says the record found doesn't belong to them or the case is not a conviction, etc. What should I do?**
  - Applicant's have a right to dispute any information in their report.
  - You should notify Corporate Screening that the applicant is disputing the information and CS will conduct a reinvestigation.

- Questions????